State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3406

02/17/2020 Authored by Stephenson, Garofalo and Long
The bill was read for the first time and referred to the Energy and Climate Finance and Policy Division

A bill for an act

relating to energy; providing for energy efficiency projects; proposing coding for new law in Minnesota Statutes, chapter 16C; repealing Minnesota Statutes 2018, section 16C.144, subdivisions 1, 2, 3, 4, 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[16C.148] ENERGY EFFICIENCY PROJECTS.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given them.

(b) "Capital cost avoidance" means money expended by a state agency to pay for utility cost-savings measures with a guaranteed savings agreement, provided the state agency determines the measures being implemented to achieve the utility, operation, and maintenance cost savings are a significant portion of an overall project.

(c) "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs. Energy conservation measure includes:

(1) insulating the building structure and systems within a building;

(2) storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(3) automatic energy control systems;

(4) heating, ventilation, or air conditioning system modifications or replacements;

(5) replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to applicable state or local building codes after the proposed modifications are made;

(6) energy recovery systems;

(7) cogeneration systems that produce steam or forms of energy, including heat or electricity for use primarily within a building or complex of buildings;

(8) energy conservation measures that provide long-term operating cost reductions;

(9) water devices and systems that (i) increase the efficiency or accuracy of water use, and (ii) reduce energy use; and

(10) gas or electric metering devices, including submetering devices, that increase the efficiency or accuracy of use measurements and reduce energy use.

(d) "Guaranteed energy-savings contract" means a contract (1) to evaluate and recommend energy conservation measures, and (2) for one or more energy conservation measures.

(e) "Qualified provider" means a person or business experienced in designing, implementing, and installing energy conservation measures.

(f) "State agency" means the Minnesota State Colleges and Universities, the University of Minnesota, and the Department of Administration for all departments of the state.

Subd. 2. **Energy efficiency projects; state agency contracts.** (a) Before entering into a contract under this subdivision, the state agency must comply with paragraphs (b) to (h).

(b) The state agency must seek proposals from multiple qualified providers by publishing notice of the proposed guaranteed energy-savings contract in the state agency's official newspaper. The state agency may publish the notice in other publications if the state agency determines additional publication is necessary to notify multiple qualified providers.

(c) The state agency must select the qualified provider that best meets the state agency's needs. A qualified provider to whom the contract is awarded shall give a sufficient bond to the state agency for its faithful performance.

(d) The contract between the state agency and the qualified provider must describe the methods that will be used to calculate the contract costs and the operational and energy savings attributable to the contract.

(e) The qualified provider must issue a report to the state agency that: (1) describes all costs of installations, modifications, or remodeling, including design, engineering, installation, maintenance, repairs, or debt service; and (2) provides detailed calculations of the projected reductions in energy and operating costs and the projected payback schedule, expressed in years.

(f) The state agency must provide published notice of the meeting in which it intends to award the contract to a qualified provider, the names of the parties to the proposed contract, and the contract's purpose.

(g) The state agency must find that the amount spent by the state under the contract on the utility cost-savings measures recommended in the engineering report, less the amount contributed for capital cost avoidance, does not exceed the amount saved in utility operation and maintenance costs up to 25 years from the date the utility cost-savings measures are implemented.

(h) The state agency must provide a copy of a contract entered into under this subdivision and the report provided under paragraph (e) to the commissioner of commerce within 30 days of the contract's effective date.

Subd. 3. **Guaranteed energy-savings contracts.** (a) Before installing equipment, making a modification, or remodeling, the qualified provider must issue a report that: (1) summarizes the estimated costs of the installations, modifications, or remodeling, including design, engineering, installation, maintenance, repairs, or debt service; and (2) estimates the projected reductions in energy or operating costs.

(b) The contract must provide that: (1) all payments, except obligations on termination of the contract before its expiration, must be made over time, but not to exceed 25 years from the date of final installation; and (2) the savings are guaranteed to the extent necessary to make payments for the systems.

(c) A guaranteed energy-savings contract that includes a written guarantee that savings meet or exceed the cost of energy conservation measures is not subject to competitive bidding requirements. The state agency may spend up to 50 percent of postinstallation energy savings on asset preservation and replacement under sections 16A.632 and 135A.04. The balance of the savings cancels to the general fund.

(d) Notwithstanding any law to the contrary, a state agency may enter into a guaranteed energy-savings contract with a qualified provider to significantly reduce energy or operating costs.

(e) A state agency may enter into a guaranteed energy-savings contract with a qualified provider if: (1) after reviewing the report, the state agency finds that the amount it would spend on the energy conservation measures recommended in the report is not likely to exceed the amount saved in energy and operation costs over 25 years from the date of the conservation measure's final installation if the recommendations in the report are followed, and (2) the qualified provider provides a written guarantee that the energy or operating cost savings meets or exceeds the costs of the system. The guaranteed energy-savings contract may provide for payments over a period of time, not to exceed 25 years.

(f) A state agency may enter into an installment payment contract to purchase and install energy conservation measures. The contract must provide that payments constituting not less than four percent of the price be paid within two years of the date of the first operation, and that remaining costs be paid monthly for a period not to exceed a 25-year term from the date of final acceptance.

(g) Guaranteed energy-savings contracts may extend beyond the fiscal year in which the contract becomes effective. The state agency must include in its annual appropriations measure for each subsequent fiscal year any amount payable under guaranteed energy-savings contracts during the fiscal year. The failure of a state agency to make an appropriation under this paragraph does not affect the validity of the guaranteed energy-savings contract or the state agency's obligations under the contracts.

Sec. 2. **REPEALER.**

Minnesota Statutes 2018, section 16C.144, subdivisions 1, 2, 3, 4, and 5, is repealed. A guaranteed energy-savings contract in effect on July 31, 2019, continues to be governed by Minnesota Statutes 2018, section 16C.144, subdivisions 1, 2, 3, 4, and 5, until the contract expires.

16C.144 GUARANTEED ENERGY-SAVINGS PROGRAM.

Subdivision 1. **Definitions.** (a) The following definitions apply to this section.

(b) "Utility" means electricity, natural gas, or other energy resource, water, and wastewater.

(c) "Utility cost savings" means the difference between the utility costs after installation of the utility cost-savings measures pursuant to the guaranteed energy-savings agreement and the baseline utility costs after baseline adjustments have been made.

(d) "Baseline" means the preagreement utilities, operations, and maintenance costs.

(e) "Utility cost-savings measure" means a measure that produces utility cost savings or operation and maintenance cost savings.

(f) "Operation and maintenance cost savings" means a measurable difference between operation and maintenance costs after the installation of the utility cost-savings measures pursuant to the guaranteed energy-savings agreement and the baseline operation and maintenance costs after inflation adjustments have been made. Operation and maintenance costs savings shall not include savings from in-house staff labor.

(g) "Guaranteed energy-savings agreement" means an agreement for the installation of one or more utility cost-savings measures that includes the qualified provider's guarantee as required under subdivision 2.

(h) "Baseline adjustments" means adjusting the utility cost-savings baselines annually for changes in the following variables:

(1) utility rates;

(2) number of days in the utility billing cycle;

(3) square footage of the facility;

(4) operational schedule of the facility;

(5) facility temperature set points;

(6) weather; and

(7) amount of equipment or lighting utilized in the facility.

(i) "Inflation adjustment" means adjusting the operation and maintenance cost-savings baseline annually for inflation.

(j) "Project financing" means any type of financing including but not limited to lease, lease purchase, installment agreements, or bonds issued by an entity, other than the state, with authority to issue bonds, obligating the state to make regular payments to satisfy the costs of the utility cost-savings measures until the final payment.

(k) "Qualified provider" means a person or business experienced in the design, implementation, and installation of utility cost-savings measures.

(l) "Engineering report" means a report prepared by a professional engineer licensed by the state of Minnesota summarizing estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and estimates of the amounts by which utility and operation and maintenance costs will be reduced.

(m) "Capital cost avoidance" means money expended by a state agency to pay for utility cost-savings measures with a guaranteed savings agreement so long as the measures that are being implemented to achieve the utility, operation, and maintenance cost savings are a significant portion of an overall project as determined by the commissioner.

(n) "Guaranteed energy-savings program guidelines" means policies, procedures, and requirements of guaranteed savings agreements established by the Department of Administration.

Subd. 2. **Guaranteed energy-savings agreement.** The commissioner may enter into a guaranteed energy-savings agreement with a qualified provider if:

(1) the qualified provider is selected through a competitive process in accordance with the guaranteed energy-savings program guidelines within the Department of Administration;

(2) the qualified provider agrees to submit an engineering report prior to the execution of the guaranteed energy-savings agreement. The cost of the engineering report may be considered as part of the implementation costs if the commissioner enters into a guaranteed energy-savings agreement with the provider;

(3) the term of the guaranteed energy-savings agreement shall not exceed 25 years from the date of final installation;

(4) the commissioner finds that the amount the state would spend, less the amount contributed for capital cost avoidance, on the utility cost-savings measures recommended in the engineering report will not exceed the amount to be saved in utility operation and maintenance costs over 25 years from the date of implementation of utility cost-savings measures;

(5) the qualified provider provides a written guarantee that the annual utility, operation, and maintenance cost savings during the term of the guaranteed energy-savings agreement will meet or exceed the annual payments due under the project financing. The qualified provider shall reimburse the state for any shortfall of guaranteed utility, operation, and maintenance cost savings; and

(6) the qualified provider gives a sufficient bond in accordance with section 574.26 to the commissioner for the faithful implementation and installation of the utility cost-savings measures.

Subd. 3. **Project financing.** The commissioner may enter into project financing with any party for the implementation of utility cost-savings measures in accordance with the guaranteed energy-savings agreement. The term of the project financing shall not exceed 25 years from the date of final installation. The project financing is assignable in accordance with terms approved by the commissioner of management and budget.

Subd. 4. **Use of capital cost avoidance.** The affected state agency may contribute funds for capital cost avoidance for guaranteed energy-savings agreements. Use of capital cost avoidance is subject to the guaranteed energy-savings program guidelines within the Department of Administration.

Subd. 5. **Independent report.** For each guaranteed energy-savings agreement entered into, the commissioner of administration shall contract with an independent third party to evaluate the cost-effectiveness of each utility cost-savings measure implemented to ensure that such measures were the least-cost measures available. For the purposes of this section, "independent third party" means an entity not affiliated with the qualified provider, that is not involved in creating or providing conservation project services to that provider, and that has expertise (or access to expertise) in energy-savings practices.